

CONSTITUTIONAL CONSIDERATIONS

SEARCH AND SEIZURE

Authorized school personnel can search a student, his or her possessions, or places under the student's control if there is a "particularized" suspicion--an "articulable" reason to believe the student knowingly possesses some contraband. The school can only search those places where they reasonably believe they will find contraband. Contraband is any item that cannot be legally possessed, such as drugs, alcohol, or weapons.

Searches by school personnel are permissible without a warrant if they are acting without police direction and they have a reasonable suspicion that they will find contraband in the place to be searched. Reasonable suspicion means the authorized school personnel must have more than a hunch or a whim to believe a student has contraband. The Supreme Court wrote in *New Jersey v. T.L.O.* "reasonable suspicion" is "a common sense conclusion about human behavior upon which practical people ... are entitled to rely." An eyewitness to drug use or possession may provide the school with reasonable grounds to search. Anonymous tips, standing alone, usually do not provide reasonable suspicion.

If a school official is relying on information from another student or teacher to establish reasonable suspicion, before the search is conducted, the person who wishes to conduct the search should know:

how the person who provided the information knows there is contraband (did he or she see it personally?) and

whether the person who gives the information is reliable (why do I believe this person?)

"Protective sweeps" are searches that are conducted without "particularized suspicion." Lockers or areas of the school can be searched on a routine basis if the search is based on a written policy. Student handbooks should include the policy that lockers are not the exclusive possession of students and are subject to random searches. Protective sweeps should not be used to target an individual student unless there is a particularized suspicion.

QUESTIONING STUDENTS

Schools may question students about violations of school rules and criminal laws without advising them of their Constitutional Rights. This questioning cannot be conducted on behalf of the police or with the aid of the police. The court will scrutinize any statements to make sure they were given voluntarily and without coercion.